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Supreme Court, U.S.
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No. 03-1557

In the Supreme Court of the United States

KARIM SALEHPOOR,

Petitioner,

v.

MOSHEN SHAHINPOOR, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondent submits that the Questions Presented are more accurately phrased as follows:

- Whether a doctoral student's grievance regarding alleged misappropriation of his dissertation research by his advisor constitutes speech of public concern worthy of First Amendment protection?

- Whether there can be any due process violation where a former student was provided notice of the concerns regarding his erratic and disruptive behavior as a visitor on the campus, and refused to avail himself of a proffered hearing regarding same?

- Whether a plaintiff who chose to submit materials outside of the pleadings for the Court's review, which the Court chose to review thereby converting a FRCP 12(b)(6) motion into one for summary judgment under FRCP 56, can defeat summary judgment by continuing to rely solely on the allegations in his Complaint?

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STATEMENT OF THE CASE

Petitioner's Statement of the Case is an exact duplicate, word for word (other than the label applied to himself, e.g., Mr. Salehpoor vs. Plaintiff vs. Appellant, and his brief description of subsequent proceedings), of his Statement of the Case to the District Court, and his Statement of the Case to the Tenth Circuit, except that it omits his introductory phrase used therein: "The following is taken from the First Amended Complaint filed herein." As indeed it is, word for word, a restatement of his complaint. But the allegations of Petitioner's complaint are of little relevance, as addressed in the Argument below, given that, in response to Defendants' Motion to Dismiss, Petitioner chose to submit voluminous materials outside of the pleadings, which the District Court considered in its ruling, thereby converting it to a Motion for Summary Judgment pursuant to FRCP 12(b)(6). (Pet., p. 18a) Indeed, the Tenth Circuit clearly explained this to Petitioner, and yet he persists in this Court to make the same mistake. (Pet., pp. 4a-5a)

Petitioner's First Amended Complaint alleged numerous state and federal claims: deprivation of property interests without due process; conspiracy to deprive him of his constitutional rights under 42 U.S.C. 1985; failure to adequately train and supervise; whistle-blowing retaliation (which in Petitioner's Response to the Motion to Dismiss he clarified was a First Amendment retaliation claim); unjust enrichment; prima facie tort; conversion and defamation. (Pet., pp. 17a, and 23a)

The District Court held that Respondents were entitled to qualified immunity on the first claim because, although the complaint was devoid of specifics regarding what due process rights were violated, any substantive due process claim failed

because it was not clearly established that Petitioner had any substantive property interest, and in any event, "Defendants did not act arbitrarily in responding either to Plaintiff's grievances regarding Shahinpoor's alleged misuse of Plaintiff's research or in his conduct which eventually led to his expulsion." (Pet., p. 19a) As to procedural due process, the District Court found that Petitioner was provided notice and given the opportunity to request an informal hearing, *which he never did*, so, assuming he was due a certain amount of process, he received it. (Pet., p. 21a) As to the conspiracy claim, the District Court found that, once again, the complaint was "devoid of any specifics", that the evidence proferred by Petitioner only "strengthens Defendants' position", and that there was nothing in the complaint from which evidence of class-based or racially discriminatory motive could be inferred. (Pet., pp. 21a-22a) The "failure to train and supervise" claim was dismissed because there was no "viable underlying constitutional claim." (Pet., p. 23a) Finally, the District Court concluded that Petitioner's grievances, the "speech" in question, concerned solely the alleged misappropriation of his dissertation material by his advisor, not the subject matter of the dissertation thesis itself, as to which Petitioner's motives were "clearly personal and emotional", and hence not protected speech for purposes of his First Amendment claim. (Pet., pp. 24a-25a) Once the federal claims were dismissed, the District Court declined to exercise jurisdiction over the state law claims. (Pet. App., pp. 3a-4a, 33a-34a) Petitioner appealed the dismissal of the federal claims. (Pet., p. 3a)

Far from rubberstamping the District Court's detailed opinion, on appeal the Tenth Circuit conducted its own thorough analysis of the record, noting its frustration with the conclusory nature of Petitioner's brief, and the utter lack of factual citation therein. (Pet., p. 5a) The Court of Appeals

provided its own citations to the materials provided by Petitioner in the record regarding the lack of factual underpinnings for Petitioner's claims, observing that: Petitioner was no longer enrolled as a student after the Spring semester of 1998 and therefore his status was as a visitor; he chose to file a grievance, which was taken seriously and investigated, the process was completed, including an appeal, but no merit was found to his allegations; he was even offered a liaison to assist in the completion of his dissertation; he was barred from the campus only after his conduct had become increasingly disruptive, confrontational and abusive; he was provided notice of this decision, and advised of his right to a hearing, which he elected not to have; and in his grievance he was "concerned solely about the theft and conversion of his research, his 'baby.'" (Pet., pp. 2a-3a, and 7a-9a) As to his conspiracy claim, the Court of Appeals explained that Petitioner cited to his Affidavit, but that it contained only conclusory allegations. (Pet., pp. 12a-13a) The Court noted that Petitioner had failed to address the District Court's dismissal of the failure-to-train-and-supervise claim, so it was not addressed on appeal. (Pet., p. 13a, n.2) Based on the foregoing undisputed facts, the Court of Appeals affirmed the District Court's judgment for Respondents.

OPPOSITION TO REASONS FOR GRANTING THE WRIT

The entirety of Petitioner's Reasons For Granting The Writ is an exact duplicate of his Argument in his brief to the Tenth Circuit, again, literally word for word, adding only an occasional conclusionary sentence, and changing the headings. Why Petitioner would have chosen to proceed in this way is inexplicable, but it does explain why the Reasons are generally incomprehensible in context; they simply are not, and have nothing to do with, reasons for granting a writ

of certiorari to the Supreme Court. Perhaps this is because Petitioner well knew that he could not meet any of the criteria this Court has provided as reasons for granting certiorari. Supreme Court Rule 10. Respondents submit that Petitioner has failed to present "with accuracy, brevity and clarity" what is essential to a ready and adequate understanding of the points requiring consideration, which is itself a sufficient reason for this Court to deny the Petition. Supreme Court Rule 14.4.

While the facts underlying Petitioner's claims are unusual, involving bizarre conduct that required a university to take the unusual step of barring him from the campus, his legal issues could not be more commonplace. As indicated by the necessary restatement provided herein of the Questions Presented, there is nothing compelling, or even interesting, about the legal issues involved, each of which consists of long settled law that does not even require clarification.

Based on Petitioner's Questions Presented, he is seeking to appeal only his First Amendment claim, and his procedural due process claim, and he challenges whether the Tenth Circuit's opinion adequately conducted a *de novo* review of same. Two of the Questions Presented are mere argument as to what Petitioner's motive was in bringing his grievance complaining about his doctoral advisor's alleged misappropriation of Petitioner's dissertation research material. There is no argument about the applicable legal standard (Pet., pp. 8a-10a, citing Connick v. Myers, 461 U.S. 138, 146, 148 & n.8, 103 S. Ct. 1684, 75 L.Ed.2d 708 (1983)), only the application of the uncontested legal standard to the undisputed facts herein.

The other two Questions Presented, and much of the stated Reasons to Grant the Writ, are premised on a gross

misstatement of the facts. For example, one of his Questions Presented seeks to determine the due process applicable to "a graduate student." But, as the Tenth Circuit explained, Petitioner ceased being a student at the end of the spring semester in 1998; from that time forward, his status on campus was as a mere visitor. (Pet., pp. 2a-3a, 7a-8a) The remaining Question Presented queries whether "de novo review of First Amendment issues requires something other than mere appellate court recital and adoption of findings made by the trial court." Petitioner never addresses this in his Reasons, and understandably so, given that one can only scratch one's head as to what he might have argued. Why in the world would a de novo review necessarily require something more? But even more to the point, this can hardly be an issue in the instant case, where the appellate court obviously conducted its own searching examination of the record.

Even in Petitioner's Discussion of the Reasons for Granting the Writ, it is as though he is addressing an entirely different case, with a different set of facts. Thus, he begins with Sections addressing whether his complaint stated various causes of action, even though he is the one who submitted materials outside the pleadings in response to a Motion to Dismiss. Having chosen to place this evidence before the District Court, Petitioner now must live with the consequences. Consideration of these materials required the District Court to convert the motion to one for summary judgment pursuant to FRCP 12(b)(6), which in turn rendered the allegations of the complaint insufficient, given that the law is well settled that one cannot rest on the allegations of one's complaint to defeat summary judgment. (Pet., p. 5a, citing Panis v. Mission Hills Bank, N.A., 60 F.3d 1486, 1490 (10th Cir. 1995)) Further, this was not even an issue Petitioner challenged in the Tenth Circuit, nor to this Court.

Because the Petition is merely a restatement of his brief to the two lower courts, argument is included that has nothing to do with the Questions Presented, but such argument here, as in the lower courts, is so minimal that it is difficult to discern its import.

Petitioner repeatedly states that the well accepted legal standards for First Amendment and Due Process claims need to be "elucidated" by this Court, but he never explains why; indeed, his statement of the Reasons to grant this Writ are themselves an exercise in obfuscation. Again, perhaps this is because a clear statement of the issues only serves to evidence their well settled nature. In any event, "elucidation" of an already well established standard is simply not a basis for the granting of certiorari.

Further legal argument on Petitioner's contentions is more appropriately reserved for the briefing on the merits in the unlikely event that this Petition is granted. Respondents note only that the Tenth Circuit's resolution herein does not conflict with any known authority, certainly not with any identified by Petitioner. It does not involve any important federal question, nor does it depart in any sense from the accepted and usual course of judicial proceedings. Petitioner had a personal dispute with his doctoral advisor, which so overtook him that he acted irrationally, refusing to proceed with the avenues provided to him for obtaining his degree, and engaging in behavior so bizarre during the time period after he was no longer a student, but rather a mere visitor to the university, that he had to be barred from the campus. There is no reason whatsoever for granting this Petition for Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, this Court should deny certiorari herein.

Respectfully Submitted,

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